



Attorney Docket No. 10393.00

Customer No. 37833

Confirmation No. 5975

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE *PATENT* APPLICATION OF:

APPLICANT : LASZLO SICHTNIK

APPL. NO. : 10/614,298

ART UNIT : 1623

FILED : JULY 8, 2003

EXAMINER: D. KHARE

TITLE : EAR AND WOUND TREATMENT

MAIL STOP RESPONSE
COMMISSIONER FOR PATENTS
ALEXANDRIA, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In the Office Action dated February 26, 2004, the Examiner required restriction under 35 U.S.C. § 121 prior to an examination on the merits of the above-identified application. The separate inventions identified by the Examiner are as follows:

- I. Claims 14-29, drawn to a pharmaceutical composition.
- II. Claims 1-10, drawn to a method of using the composition of Group I.
- III. Claims 11-13, drawn to an apparatus for administering a pharmaceutical powder composition.

The Examiner states that the inventions of Groups I and II are related as product and method of use. The inventions of Groups I and III, and Groups II and III are asserted to be unrelated to one another. In order to establish that the separate inventions of Groups I and II are distinct, the Examiner

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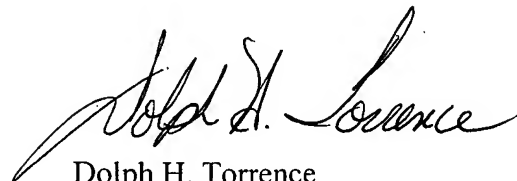
asserts that the method of Group II can be practiced with a product materially different from that of Group I.

In compliance with the Examiner's requirement, Applicant provisionally elects with traverse for further prosecution the product defined by Claims 14-29 (designated as Group "I").

Notwithstanding the propriety of the restriction requirement for examination purposes, it should be pointed out that such a requirement is discretionary on the part of the Examiner. Further, the Examiner has failed to provide an example of "a materially different product" that can be used to practice the method of Group II and therefore does not meet the criteria for distinctness as set forth in MPEP 806.05(h). Moreover, it would appear that a search and examination of the entire application can be conducted without a serious burden on the Office.

Therefore, it is respectfully requested that the Examiner withdraw the restriction requirement and issue an action on the merits of the claimed embodiments presently in the application. Alternatively, should the Examiner maintain the requirement, Applicant awaits a complete action on the merits of the elected subject matter.

Respectfully submitted,



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DHT:RCL